

REMARKS

Specification

The abstract stands objected to for not containing a concise statement of the technical disclosure. Applicant respectfully submits that a replacement abstract with the proper content has been added. Consequently, removal of the objection to the specification is respectfully requested.

Summary

Claims 1-5 and 7-20 stand in this application. Claim 6 has been canceled without prejudice. Claims 1, 11, 15 and 19 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 11, 15 and 19 in order to facilitate prosecution on the merits. Support for the above amendments can be found in the specification at least at paragraph [0033].

35 U.S.C. § 102

At page 3, paragraph 6 of the Office Action claims 1-8, 11, 13-15 and 17-20 stand rejected under 35 U.S.C. § 102 as being anticipated by Ball et al., *Efficient Path Profiling*, IEEE, pages 1-12, 1996 ("Ball"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Ball fails to teach each and every element recited in claims 1-5, 7-8, 11, 13-15 and 17-20 and thus they define over Ball. For example, with respect to claim 1, Ball fails to teach, among other things, the following language:

wherein said subset of program instructions comprises a function and a number of traces stored in the trace buffer is proportional to a number of functions in the program instructions.

Applicant respectfully submits that claim 1 defines over Ball.

Applicant respectfully submits that Ball, arguably, teaches a path profiling algorithm that determines the execution frequency of control-flow paths in a routine and associates a unique path value with each distinct path within the routine. By way of contrast, the claimed subject matter teaches “wherein said subset of program instructions comprises a function and a number of traces stored in the trace buffer is proportional to a number of functions in the program instructions.” Applicant respectfully submits that this is different than the teaching of Ball.

Applicant respectfully submits that he has been unable to locate at least the above recited language of amended independent claim 1 in the teaching of Ball. Applicant submits that Ball fails to mention that the number of traces stored in the trace buffer is proportional to the number of function in the program instructions as recited in claim 1. Consequently, Ball fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests

withdrawal of the anticipation rejection with respect to claims 2-5 and 7-8, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Ball.

Claims 11, 15 and 19 have been amended to recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 11, 15 and 19 are not anticipated and are patentable over Ball for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 11, 15 and 19. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 13-14, 17-18 and 20 that depend from claims 11, 15 and 19 respectively, and therefore contain additional features that further distinguish these claims from Ball.

35 U.S.C. § 103

At page 8, paragraph 8 of the Office Action claims 9, 10, 12 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ball in view of US 6,094,729 to Mann ("Mann"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant respectfully submits, as recited above, that Ball fails to teach, suggest or disclose each and every element recited in independent claims 1, 11 and 15. Moreover, Applicant submits that Mann also fails to teach, suggest or disclose the above recited missing language. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness

rejection with respect to claims 9, 10, 12 and 16 that depend from claims 1, 11 and 15 respectively, and therefore contain additional features that further distinguish these claims from the cited references.

For at least the above reasons, Applicant submits that claims 1-5 and 7-20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-5 and 7-20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Appl. No. 10/814,374
Response Dated May 21, 2008
Reply to Office Action of February 21, 2008

Docket No.: 1020.P18414
Examiner: Kang, Insun
TC/A.U. 2193

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: May 21, 2008

KACVINSKY LLC
C/O Intellevate
P.O. Box 52050
Minneapolis, MN 55402
(724) 933-5529